(Kans.), refuse relief almost without discussion. A few courts, however, have noticed the fallacy, and have properly declined to follow the English authorities. *Northrup* v. *Graves*, 19 Conn. 548. Ignorance of law, indeed, does not excuse; but one who has paid money under a mistake of law does not ask excuse, for he has done no wrong. In conscience he is as much entitled to recover his money as if his mistake had been one of fact, and the law should afford him the same redress.

RECENT CASES.

CONFLICT OF LAWS — FOREIGN CORPORATIONS — TAXATION. — A statute provided that non-residents doing business in the State of New York should be taxed on all sums invested in that business, as if they were residents. *Held*, that the credits of a foreign corporation were thereby subjected to taxation. *People* v. *Barker*, 48 N. Y. Supp. 553.

The tax is laid not upon the right of the foreign corporation to do business in New York, but on its property. Property of a non-resident must be situated within the State in order that it may be taxed there. *People* v. *Comm'rs of Taxes*, 23 N. Y. 224. The *situs* of a debt is the domicile of the creditor, and it can be taxed there, *Kirtland* v. *Hotchkiss*, 100 U. S. 491; but not elsewhere, *State Tax on Foreign-held Bonds*, 15 Wall. 300. A person can have only one domicile at one time, *Abington* v. *No. Bridgewater*, 23 Pick. 170; and the State of incorporation is the domicile of the corporation. *Paul* v. *Virginia*, 8 Wall. 168, 181. Ingraham, J., dissenting in the principal case, follows this reasoning. The notion of the majority, that the credit is in New York merely because it appears on the books of the agency there, seems to be unsound.

CONFLICT OF LAWS — TORTS — STATUTES. — Kentucky and Tennessee have somewhat similar statutes as to recovery for causing death wrongfully. Plaintiff's decedent was killed in Tennessee by defendant's negligence. In that State contributory negligence is not a bar to an action, but merely goes in mitigation of damages. In a suit in Kentucky, where contributory negligence is a bar, *held*, that the law of Tennessee should govern defendant's liability. *Louisville & N. R. R. Co.* v. *Whitlow's Adm'r*, 43 S. W. Rep. 711 (Ky.).

Actions for common-law torts to the person or to personal property are generally held to be transitory in their nature, and may be brought wherever the wrongdoer may be found and jurisdiction of his person obtained. *Mitchell* v. *Harmony*, 13 How. 115. The English courts, however, refuse to enforce rights acquired by foreign law unless by English law the defendant would have been liable. *The Halley*, L. R. 2 P. C. 193. In this country the question usually arises in regard to actions for torts which are made actionable by statute in the place where they are committed. The earlier cases refused recovery on the ground that they would not enforce foreign penal laws, — a reason sound enough, but not applicable to the facts. The courts now generally hold that such rights will be enforced where there is a similar though not identical statute in the forum. *Dennick* v. *R. R. Co.*, 103 U. S. 11. Whether a similar statute in the forum is necessary is not everywhere agreed, but the true rule is believed to be as follows. Rights acquired in one State, whether in contract or tort (except certain classes of torts to realty), by statute or the common law, will be enforced everywhere unless contrary to public policy as interpreted in the forum. That the *lex fori* would not have considered the act a tort or the contract valid does not show it to be against public policy; it must be against good morals or natural justice. *Herrick* v. *Minneapolis, etc. R. R. Co.*, 31 Minn. 11.

CONSTITUTIONAL LAW — EX POST FACTO STATUTE. — A statute was passed after a crime was committed, which abrogated the previously existing rule that writings were not admissible for comparison with a disputed writing, unless they were in evidence and admitted to be in the handwriting of the party affected. *Held*, that it was not an *ex post facto* law. *State* v. *Thompson*, 42 S. W. Rep. 949 (Mo.).

Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender, is *ex post facto*. *Calder* v. *Bull*, 3 Dall. 386. This test has always been acceded to. *Kring* v. *Missouri*, 107 U. S. 221. But the principal case is

not open to this objection. The statute does not change the sort of evidence which may be introduced. It simply admits a larger class of writings than before. It is within the principle of *Hopt* v. *Utah*, 110 U. S. 574. In that case it was held that a statute passed after the commission of the crime, removing the disability of convicts to testify, was not *ex post facto*. It made no change in the kind of evidence which might be received, but simply enlarged the class of persons who might testify.

CONTRACTS — CONDITIONS — SATISFACTION OF PROMISOR. — Plaintiff sold certain machinery to defendant, payment to be conditional upon its operating to the latter's satisfaction. In an action by plaintiff for the purchase price, *held*, that, if defendant should have been satisfied, he is liable. He cannot reject the machinery arbitrarily, but must show reason for his dissatisfaction. *Hummel* v. *Stern*, 48 N. Y. Supp. 528.

The court merely follows previous New York decisions. *Dall* v. *Noble*, 116 N. Y. 230. The authorities generally are not unanimous on the point. The intention of the parties should furnish the governing principle. Therefore, if, by the natural interpretation of the agreement, payment appears to be dependent upon the actual satisfaction of the promisor, there seems little reason for stretching the fair meaning of the words in order to give a contrary decision. No rule of law or supposed public policy precludes the enforcement of such a condition so long as the promisor acts in good faith, and the doctrine of the principal case imposes upon the defendant a liability which neither party intended him to assume. *Singerly* v. *Thayer*, 108 Pa. 291. An earlier New York case is in accord with the above view, and with *Singerly* v. *Thayer*, *supra*, but the principal case represents the present law in that State. *Gray* v. *Central, etc. R. R. Co.*, 11 Hun, 70. The practical result is often the same, however, as the line separating an unreasonable rejection from fraud is often very indistinct.

CONTRACTS — DIVISIBLE CONTRACTS — DAMAGES. — The defendant railroad company contracted to furnish plaintiff with an annual pass, to be renewed at the pleasure of plaintiff. In an action for breach of the contract, *held*, that the contract is divisible, and plaintiff can only recover damages for breaches occurring before the commencement of the action. *Kansas & C. P. Ry. Co.* v. *Curry*, 51 Pac. Rep. 576 (Kan.).

The pass had been refused for five consecutive years. If, therefore, the contract had been bilateral, the breach would probably have gone to the essence, and would have excused plaintiff from performance of his part. This seems to be the test even in unilateral contracts like the present, in determining whether the plaintiff may treat the agreement as at an end and recover prospective damages. The decisions upon contracts for support or for employment have generally followed this principle, and it is difficult to distinguish the principal case from these. 2 Sedg. Dam., 8th ed., 126; *Parker* v. *Russell*, 133 Mass. 74. Whether there has been such a total breach is a question of fact. *Remelee* v. *Hall*, Vt. 582. The adoption of the above doctrine does not necessarily preclude the plaintiff from treating the contract as still in existence, and electing to recover merely for damage which he has suffered before the commencement of the action.

CONTRACTS — STATUTE OF LIMITATIONS — WAIVER. — *Held*, where a creditor was induced to forbear to sue on the faith of a parol promise by the debtor not to plead the Statute of Limitations, the latter defence will not be sustained, even though the Code provides that only a written acknowledgment shall be sufficient to take a debt out of the Statute. *Cecil* v. *Henderson*, 28 S. E. Rep. 481 (N. C.).

This decision is in accordance with the settled law of North Carolina. *Barcroft* v. *Roberts*, 91 N. C. 368. In England, it seems that a mere promise not to plead the Statute, even if the creditor forbears to sue in reliance thereon, is not a sufficient acknowledgment. *Rackham* v. *Marriott*, 2 H. & N. 196; Banning, Statute of Limitations, 52. But see *Gardner* v. *M'Mahon*, 3 Q. B. 561. In this country, also, the law is in a somewhat unsettled condition. 1 Wood on Limitations, 228. The line of North Carolina decisions culminating in the principal case directly contravenes the Statute requiring all acknowledgments to be in writing, and forms another illustration of the same desire to prevent the legislature from working injustice, which in many instances has nullified the Statute of Frauds. In Maine, the courts have gone to the opposite extreme, and will not allow an action for breach of a parol agreement, upon good consideration, not to take advantage of the defence of limitations. *Hodgdon* v. *Chase*, 32 Me. 169. That is straining the Statute for the sake of working a hardship, and is less easily justified than the course taken in North Carolina.

CORPORATIONS — DEALINGS WITH STOCKHOLDER — NOTICE. — A corporation purchased land from two persons, who held the record title, and also owned most of the corporate stock. No one representing the corporation, except one of the grantors, knew that the land was affected by an unrecorded trust instrument. *Held*, that his knowledge

was not to be imputed to the corporation, and that it was a purchaser without notice. *Whittle* v. *Vanderbilt Mining Co.*, 83 Fed. Rep. 48.

The general rule is that notice to the agent is notice to the principal, or, as it is more commonly stated, it is presumed that facts in the knowledge of the agent have been communicated to the principal. Story on Agency, § 140. But where the agent is acting on his own behalf, adversely to the principal, the rule does not apply. Obviously, there can be no presumption that the agent will communicate facts within his knowledge which it is for his advantage to conceal. *Frenkel* v. *Hudson*, 82 Ala. 158. Under such circumstances, he ceases to be an agent in any real sense, and becomes, for the purposes of the transaction, a stranger. 4 Thompson on Corporations, § 5206.

CRIMINAL LAW — ASSAULT AND BATTERY — CONSENT. — Defendant, a druggist, at a purchaser's request, sold croton oil to him concealed in candy, and in sufficient quantities to produce injury. Defendant believed that it was to be administered to some person as a joke, and not for medicinal purposes. The purchaser administered it to X, who was injured thereby. *Held*, that defendant is guilty of an assault and battery. *State* v. *Monroe*, 28 S. E. Rep. 547 (N. C.).

It was a statutory misdemeanor to retail croton oil without a label, but this fact had no influence upon the result. The force in an assault and battery may be applied internally, and defendant was at least criminally negligent. *Carr* v. *State*, 135 Ind. 1. The English law was at one time in accord with the principal case. *Reg.* v. *Button*, 8 C. & P. 660. The later cases overruled *Reg.* v. *Button*, but their evil effect has been largely obviated in England by statute. *Reg.* v. *Hanson*, 2 C. & K. 912. The principal difficulty arises on the question of consent, as the consent of the injured party is a defence in many misdemeanors. Consent is not present in these cases, however, for, because a party accepts one article, he does not necessarily consent to accept another different article concealed therein. *Com.* v. *Stratton*, 114 Mass. 303. It is not a case of fraud vitiating consent, for there is no consent. Failure to recognize the above distinction was the cause of the erroneous decision in *Reg.* v. *Clarence*, 22 Q. B. 23.

CRIMINAL LAW — FALSE PRETENCES — OBTAINING CREDIT BY FRAUD. — Defendant entered a restaurant, and ordered and partook of a meal, having at the time no money in his possession with which to make the customary cash payment. *Held*, the evidence will not support a conviction for obtaining goods by false pretences, but defendant was properly found guilty (under another count) of the statutory crime of obtaining credit by fraud. *Regina* v. *Jones*, [1898] 1 Q. B. 119.

The jury found that the defendant intended to represent by his conduct that he was able and willing to pay immediately. The court, however, was of opinion that this verdict was not warranted by the evidence, but upheld the conviction on the second count, on the ground that while a false pretence is essential to the former crime, the latter may be committed by any species of sharp dealing that may be denominated fraud. A further difference between the two offences is, that the crime of false pretences includes an obtaining possession of goods, while the other misdemeanor requires merely a securing of credit. Following out this line of reasoning, it may be urged that the present defendant never acquired possession of the food until it could no longer be called "goods," and that this transaction was a sale not of the food, but of the right to eat it. If this be correct, the defendant clearly could not be convicted of obtaining goods under false pretences. However, even if the distinction is sound, it is so subtle a refinement that it is impossible that it should be generally adopted. The reason given by the court is, therefore, the better ground on which to rest the decision.

EQUITY — CORPORATIONS — ANSWER UNDER SEAL. — *Held*, that, although a bill in equity by a corporation need not be under seal, the answer of a corporation to a bill must be. *R. Frank Williams Co.* v. *United States Baking Co.*, 38 Atl. Rep. 990 (Md.).

Why a seal should be required for one pleading rather than another, is not clear. The case is a curious illustration of the conservatism of courts in dealing with technical rules which have no longer any reason for existing. In *Ransom* v. *Stonington Savings Bank*, 13 N. J. Eq. 212, commonly cited for the doctrine of the principal case, the court admitted that the reason for the rule is obsolete. The better modern view is that a seal is necessary for a corporation only when it is necessary for an individual. 2 Morawetz, Corporations, 2d ed., § 338. The rule in the principal case must often be inconvenient, and both equity practice and the law of corporations might well be simplified by discarding the superstition about corporate seals. See 2 HARVARD LAW REVIEW, 117–121; *Larrison* v. *P. A. & D. R. R. Co.*, 77 Ill. 11.

EQUITY — DIVORCE — PHYSICAL EXAMINATION. — *Held*, that in an action to annul a marriage on the ground of physical disability, the court has power to direct a surgical examination of the defendant. *Cahn* v. *Cahn*, 48 N. Y. Supp. 173.

The right to physical immunity is most carefully guarded by the law, and is not to

be infringed unless the authority is clear and unquestionable. Cooley on Torts, 29. An examination will not be ordered in an action for personal injuries. *Union Pac. Ry. Co.* v. *Botsford*, 141 U. S. 250. But to save the life of an unborn child, a writ *de ventre inspiciendo* has been issued. *In re Blakemore*, 14 L. J. N. S. Ch. 336. The authority in the principal case rests on the grounds that the privacy of the individual must yield to the necessity of the community, *Davenbagh* v. *Davenbagh*, 5 Paige, 554; and that only on the clearest proof will the marriage be annulled. The confession of the defendant is not sufficient, *Welde* v. *Welde*, 2 Lee Ecc. 580; nor is the unsupported testimony of the plaintiff. *U*—— v. *J*——, L. R. 1 Prob. & Div. 460. The doctrine of the principal case arose in the ecclesiastical courts, *Briggs* v. *Morgan*, 2 Hagg. Conn. 324; and has been generally followed, *Le Baron* v. *Le Baron*, 35 Vt. 365; *Anon.*, 35 Ala. 226; *Shafto* v. *Shafto*, 25 N. J. Eq. 34; but is apparently rejected in Ohio, 2 West. L. J. 131.

EQUITY — PRIORITY — PURCHASE FOR VALUE WITHOUT NOTICE. — *Held*, that a trustee of an equitable claim cannot make a frandulent release or assignment to a purchaser for value without notice which will bar the *cestui*. *Evans* v. *Roanoke Savings Bank*, 28 S. E. Rep. (Va.).

The facts in this case are very complicated, but the point seems to be squarely raised and decided. The authorities on this and apparently analogous questions are hard to reconcile. See Langdell Eq. Pl., Ch. VII.; 2 Pomeroy Eq. Jur., 2d ed., §§ 677–785; 1 HARVARD LAW REVIEW, 1. The principal case is emphasized by its possible conflict with the recording act pointed out by two dissenting judges.

INTERPRETATION OF STATUTES — MECHANIC'S LIEN — LABOR ON DITCH. — A statute gave a lien for labor in constructing an irrigating ditch both on the ditch and on so much land as might be required for its convenient use. *Held*, the lien extends to the tract for whose irrigation the ditch was constructed. *Springer Land Assn.* v. *Ford*, 18 Sup. Ct. Rep. 170. See NOTES.

PARTNERSHIP — TWO FIRMS WITH A COMMON PARTNER. — *Held*, a firm or its assignee may maintain an action against another firm to recover an indebtedness, although the firms may have common partners. *Mangels* v. *Shaen*, 48 N. Y. Supp. 526.

The partners hold the legal title to firm property. *Holmes* v. *Jarrett, Moon, & Co.*, 7 Heisk. 506. Since in a suit at common law by or against the firm the partners must all be joined, the difficulty arises, if the firms have a common partner, that the same party is both plaintiff and defendant; and this has been held insurmountable. *Bosanquet* v. *Wray*, 6 Taunt. 598. That a statute allowing the firm to sue or be sued in the firm name would obviate the difficulty has been suggested. Lindley on Partnership, 4th ed., 469. But equity will give relief in accordance with the mercantile conception that the firm is an entity distinct from its partners. *Piercy* v. *Fynney*, 12 Eq. 69; *Taylor* v. *Midland Ry. Co.*, 28 Beav. 287; s. c. 8 H. L. C. 751. The principal case belongs to that class where the law has adopted the equitable and mercantile view. *Cole* v. *Reynolds*, 18 N. Y. 74; *Menagh* v. *Whitwell*, 52 N. Y. 146; *Taylor Co.* v. *McClung*, 2 Houst. 24; *Fern* v. *Cushing*, 4 Cush. 357.

PERSONS — ACTION BY WIFE AGAINST HUSBAND — PERSONAL INJURIES. — *Held*, that a wife cannot maintain an action against her husband for assault and battery; but as this doctrine rests on the unity of person, the court cannot, in dismissing her complaint, award costs against her. *Abbe* v. *Abbe*, 48 N. Y. Supp. 25.

That a wife could not sue her husband in tort at common law is clear. Stewart, Husband and Wife, § 48. While the Married Woman's Acts in the various States have to a large extent separated the personality of the wife from that of her husband, and removed most of her disabilities, what few cases have arisen are in accord with the principal case in holding that the Acts do not extend to allowing her to sue for personal injuries by him. *Peters* v. *Peters*, 42 Iowa, 182.

On the point as to costs, the reasoning of the court is rather curious, but seems perfectly sound. As the husband and wife are at common law one person, a dismissal of her complaint is to be considered as a judgment against the successful party. For the authorities as to costs, see Stewart, Husband and Wife, §§ 437, 463.

PROCEDURE — ARGUMENTS TO JURY — READING LAW BOOKS. — *Held*, that permitting counsel, against objection, to read to the jury reports of cases, is error. *Griebel* v. *Rochester Printing Co.*, 48 N. Y. Supp. 505.

In criminal cases, it has been the practice in a few of the States to allow counsel to address the jury on questions of law, and to read from text-books and reports. This has rested rather on long-continued custom than on any theory that the jury are to judge both of law and of fact. *Com.* v. *Porter*, 10 Met. 263. In civil cases, it has been held almost universally that the jury must take the law from the court, and that counsel

should not be allowed to argue questions of law to them. 1 Thompson on Trials, 720. Even where books are permitted to be read to the jury, the extent of their use is to be limited by the sound discretion of the court. *Com.* v. *Austin*, 7 Gray, 51.

PROPERTY — ADVERSE POSSESSION. — The plaintiff and A were owners of adjoining land, and erected a fence between their lots. By mistake as to the boundary a strip of the plaintiff's land was included in A's lot. A conveyed to the defendant, who remained in possession for more than twenty years, believing he was the owner of the strip. *Held*, the defendant, in the absence of a hostile claim brought to the notice of the plaintiff, had not acquired a title by adverse possession. *Rasdell* v. *Shumway*, 51 Pac. Rep. 285 (Kan.).

This case follows a previous Kansas decision. *Winn* v. *Abeles*, 35 Kan. 85. And there are decisions to the same effect in other jurisdictions. *Grube* v. *Wells*, 34 Iowa, 148; *Brown* v. *Gay*, 3 Greenl. 126; *Brown* v. *Cockerell*, 33 Ala. 38. But the better doctrine is that the intention of the possessor is immaterial. If in fact he takes possession of the land, not under the true owner and hence adversely to him, there is a disseisin, and the Statute of Limitations should run from that time. *French* v. *Pearce*, 8 Conn. 439.

PROPERTY — BONA-FIDE PURCHASER — NOTICE BY POSSESSION. — A deeded land to B and C in common, and B afterward quit-claimed to C. Later B executed a deed purporting to convey an undivided half interest in the land to D, a purchaser for value without actual notice of B's deed to C. D's deed was put on record, but the earlier deeds were not recorded. At the time of the deed to D, C was in actual possession of the land. *Held*, that D got no title as against C. *Jones* v. *Brenizer*, 73 N. W. Rep. 255 (Minn.).

The court rests its decision on two grounds. The first is that D is entirely outside the protection of the registry laws, since he bought from one who had no record title. The reasoning is unsound, since, as to the moiety in dispute, C claims under the same grantor, B, as D claims under, and cannot properly take any advantage of the fact that the deed to B was not on record. In a contest between C and D there is no reason for going back of their immediate common grantor. The other ground for the decision is that C's possession was constructive notice to D of the unrecorded deed from B to C. It is the prevailing, though by no means universal, doctrine that exclusive, notorious possession under an unrecorded deed is constructive notice to all concerned of the existence of that deed. Wade on Notice, ch. iv. But C's possession was not apparently exclusive, since he was supposed to be a tenant in common with B, and the possession of one tenant in common is not adverse to his co-tenant. There was nothing to put D on his guard against C, and the court went too far in applying the general rule to this case. See Wade on Notice, 2d ed., § 290.

PROPERTY — RECORD OF MORTGAGE — CONSTRUCTIVE NOTICE. — The grantor of land took a mortgage back for a part of the purchase-money. The mortgage was recorded, and contained a recital of the earlier deed by the mortgagee to the mortgagor, which was not recorded. *Held*, that a later purchaser from the grantor had no constructive notice of the unrecorded deed. *Sternberger* v. *Ragland*, 48 N. E. Rep. 811 (Ohio).

Notice of the recorded mortgage would be notice of all its contents, and hence of the recorded deed recited in it. Wade on Notice, 2d ed., § 15. But the court holds that the purchaser had no constructive notice of the mortgage, since it was made by an apparent stranger to the title to one who already had a good record title by an earlier recorded deed. In looking down the records, an intending vendee, after finding this earlier deed putting title into his vendor, would look only for deeds which might get the title out again, and so would not see a later deed to the vendor. If he were following the records back, however, he would naturally find the later deed first. In view of the uncertainty as to which method he would adopt, it seems fairer and more consonant with the spirit of our registry laws not to fix him with notice. It is hard, however, to see how this view can consistently be taken in those States where a later purchaser has constructive notice of recorded deeds made by his grantor before acquiring title. In accord with the principal case are *Veazie* v. *Parker*, 23 Me. 170, and *Pierce* v *Taylor*, id. 246, apparently the only cases quite in point.

SALES — SHIPMENT OF LIQUOR — PLACE OF SALE. — Where liquor is sent C. O. D., the title passes when the vendor delivers the goods to the carrier. *James* v. *Commonwealth*, 41 S. W. Rep. 1107 (Ky.). See NOTES.

TELEGRAPH COMPANIES — LIABILITY TO ADDRESSEE. — Defendant company was negligent in the transmission of a message addressed to plaintiff, whereby plaintiff suffered damage. The message purported to be sent subject to the regulations printed

thereon, one of which was that claims for damages must be presented within sixty days. *Held*, that as the defendant's duty to use care toward plaintiff did not arise out of contract but was imposed by law, the plaintiff was not bound by the stipulation unless he had assented thereto. *Webbe* v. *W. U. Tel. Co.*, 48 N. E. Rep. 670 (Ill.).

In England, the telegraph company seems to be under no duty (in the absence of fraud) except such as arises out of contract. Unless the receiver can show a contract, as where the sender is his agent, he cannot sue the company. *Dickson* v. *Reuter's Tel. Co.*, 3 C. P. D. 1. Where a contract does exist, the above stipulation would be binding, since it is reasonable. But in this country it is generally held that the company is under a duty imposed by law to exercise care. *W. U. Tel. Co.* v. *Dubois*, 128 Ill. 248. On this view, the reasoning in the principal case seems sound. A contract between A and B cannot affect a duty which B owes C. The authorities generally are in accord. *W. U. Tel. Co.* v. *McKibben*, 114 Ind. 511. The decisions *contra*, other than those which proceed on the idea of a contract, are usually put on the ground that this is a reasonable regulation which the company has the right to make. *Ellis* v. *Am. Tel. Co.*, 13 Allen, 226.

Even if the plaintiff had assented to the stipulation, it is difficult to see how it could have had any effect. No doubt a binding contract would be a defence, but this would not often be found, owing to the lack of consideration.

TORTS — CONVERSION — MARRIED WOMEN. — A shop-keeper sold and delivered goods to a married woman for immediate consumption. *Held*, although the contract of sale was void, yet the intended vendee is not liable in trover, where the goods had been consumed before a demand and refusal. *Locke* v. *Reeves*, 22 So. Rep. 850 (Ala.).

This particular point is one of those obvious and elementary propositions of law for which the authority of decided cases is often strangely lacking. The general rule is that no one can be held legally responsible for the repudiation of a void contract. So far is this principle carried, that an action for deceit will not lie against a *feme covert*, for obtaining goods by fraudulently representing herself to be *sole*. *Liverpool, etc. Association* v. *Fairhurst*, 9 Ex. 422; *Keen* v. *Hartman*, 48 Pa. St. 497. In the principal case, it is not necessary to go to such lengths. For, although the agreement is void as a sale, it is valid as a license; and, until the original owner revokes the authority to use the goods and makes a demand for them, he cannot complain of any acts of ownership exercised by the licensee. Cf. *Wilt* v. *Welsh*, 6 Watts, 9, 12; but see *Campbell* v. *Stokes*, 2 Wend. 137. In the present instance, the plaintiff made no demand until the property had ceased to exist; and the failure to surrender then because of the impossibility of so doing is no evidence of conversion.

TORTS — DECEIT — INTENT. — Plaintiff's agent bought machinery for him from defendant, who signed a contract of sale in which the consideration was stated as $3000, when in fact it was only $1625. This statement enabled the agent to cheat plaintiff out of the difference. *Held*, that plaintiff could not recover unless defendant intended the result that occurred. *Thorp* v. *Smith*, 51 Pac. Rep. 381 (Wash.).

It is evident from the record that the recital of the consideration was put into the contract with the expectation that third parties would act in reliance upon it. As plaintiff did so act and was thereby damaged, there is no good reason why he should not recover, even though defendant did not specially contemplate him as likely to be deceived. *Bedford* v. *Bagshaw*, 4 H. & N. 538. The defendant did not suppose any damage would be done, since he considered the property worth $3000, is no defence, as the court seems to think it is, nor is the fact that defendant did not expect to gain anything for himself by the deception. *Foster* v. *Charles*, 7 Bing. 105. It is submitted that the court was also wrong in holding that negligence on plaintiff's part in not making further inquiries would interfere with his right of recovery. *Cottrill* v. *Krum*, 100 Mo. 397.

TORTS — IMPUTED NEGLIGENCE. — The plaintiff's intestate was about to drive across the track of the defendant's road, and requested X, a bystander, to look for approaching trains. At a signal from X, the intestate drove upon the track, and was killed. *Held*, the negligence of X was imputable to the intestate, and the plaintiff could not recover. *Bronson* v. *N. Y., etc. Ry. Co.*, 48 N. Y. Supp. 257.

There seems to be no necessity of evoking the doctrine of imputed negligence. The intestate himself was plainly negligent in delegating the duty of looking for trains to a stranger of whose competency he was ignorant, and on that ground the plaintiff should have failed. *Brickell* v. *N. Y., etc. Ry. Co.*, 120 N. Y. 290. But however that may be, the doctrine of imputability was properly applied. X, at the time of the accident, was a servant of the intestate, and on principles of agency his contributory negligence should prevent the master or his representatives from recovering. Bishop, Non-Contract Law, sec. 1069. That the intestate had constituted X his agent and

was exercising control over him is the decisive fact, for the general rule is that the contributory negligence of a third person cannot be imputed to a plaintiff who is himself without fault. *Mills* v. *Armstrong*, L. R. 13 App. Cas. 1; *Little* v. *Hackett*, 116 U. S. 366.

TRUSTS — PRECATORY WORDS. — A wife devised the residue of her estate to her husband, adding this clause: "It is my wish and desire that he shall furnish a home and maintenance to my father for life should he need it." *Held*, this imposed a binding trust. The wish of a testator, like the request of a sovereign, is equivalent to a command. *Foster* v. *Willson*, 38 Atl. Rep. 1003 (N. H.).

The subject of "precatory trusts" was discussed in 11 HARVARD LAW REVIEW, 261. The decision in the principal case seems to be based upon a test formerly applied in equity, but abandoned in later cases.

TRUSTS — STATUTE OF WILLS — PAROL EVIDENCE. — A will contained an absolute devise to a subscribing witness. The testator intended the gift to be on trust. Of this the devisee had knowledge prior to the making of the will, and made no objection. *Held*, that the testator's intent could not be shown by parol evidence, because of the clause concerning wills in the Iowa Statute of Frauds. The devisee, therefore, took an absolute interest, and the devise to him was void. *Moran* v. *Moran*, 73 N. W. Rep. 617 (Iowa).

The correctness of the decision depends upon whether there was a trust enforceable against the subscribing witness. If there was, he did not have a disqualifying interest. This is a question arising under the provision in the Statute of Frauds concerning trusts in lands, and not that in regard to wills. The devisee, having knowledge of the testator's ante-testamentary proposal to make him a trustee, agrees by his assent, express or to be implied from his silence, to carry out the trust upon receipt of the *res*. The *res* is conveyed by will, duly executed according to statute. The question that then arises is not upon the validity of the will, but upon the enforcement of the parol ante-testamentary agreement. Such a parol agreement cannot be enforced when land is conveyed by deed. But by the great weight of authority, it is enforceable when the conveyance is by will, although on theory no distinction should be made. *Mucklestone* v. *Brown*, 6 Ves. 52; *Barrell* v. *Hanrick*, 42 Ala. 60; *O'Reilly's Appeal*, 154 Pa. 485.

The formalities required by § 1934 of the Iowa Code of 1873, for the creation of trusts in land, were not complied with in the principal case. If this section applies to wills, the result might be supported on that ground. But this point the court expressly refuses to decide.

WILLS — CONSTRUCTION — ELECTION. — The testator made a will, giving land subject to a legacy and a charge to A, whom he named as executor. Subsequently the testator gave A a deed in fee of the land. On the testator's death, A qualified as executor. *Held*, that A, having undertaken the execution of the will, had elected to take under the will, and so held the land subject to the charge. *Allen* v. *Allen*, 28 S. E. Rep. 513 (N. C.).

Where a man by deed or will gives property to A, and by the same instrument assumes to give some of A's own property to B, it is a rule of equity that A must either renounce the instrument entirely, or if he takes under it, must allow his property to go to B, unless it appears from the instrument that A was to have his gift at all events. This is the doctrine of election, and is based on the presumed intention to impose a condition which is binding on A's conscience. 2 Story Eq. Jur., 13th ed., §§ 1075–1099. The principal case misapplies this doctrine. The devise subject to the charge was revoked by the conveyance during the testator's life. The case, therefore, makes a will for the testator in direct opposition to his duly expressed wishes.

REVIEWS.

HANDBOOK OF THE LAW OF EVIDENCE. By John J. McKelvey. St. Paul, Minn.: West Publishing Co. 1898. pp. xii, 468.

This latest volume of the *Hornbook Series* deals with one of the important divisions of the law with certainly all the compactness that is permissible. Mr. McKelvey has endeavored to strike a mean between "the meagreness of Stephen's Digest, on the one hand, and the unwieldy